JD–08–11
Latham, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NEW YORK STATE NURSES ASSOCIATION

and Case 3-CA-27723

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

Gregory Lehmann, Esq., and Brie Kluytenaar, Esq., of Albany, NY,
for the Acting General Counsel.
*Brad Manzolillo, Esq., o*f Pittsburgh, PA,
for the Charging Party.
G. Peter Clark, Esq., of New York, NY,
for the Respondent.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on December 6 and 7, 2010,[1] in Albany, New York, pursuant to a Complaint and Notice of Hearing (the complaint) issued on October 20, by the Regional Director for Region 3 of the National Labor Relations Board (the Board). The complaint, based upon a charge filed on July 12, and an amended charge on August 6, by United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, AFL-CIO, CLC (the Charging Party or Union), alleges that New York State Nurses Association (the Respondent or Association), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by interfering with employees' union organizing activities when it changed terms and conditions of employment including compensation for employees in the unit during a union organizing campaign and Section 8(a)(1) and (5) of the Act by unilaterally implementing a "Blackberry" policy which impacted cell phone reimbursement and disciplinary practices for employees without prior notice and affording the Union an opportunity to bargain with Respondent regarding the conduct and the effects of the conduct.

[1] All dates are in 2010 unless otherwise indicated.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel, Charging Party,[2] and the Respondent,[3] I make the following

Findings of Fact

I. Jurisdiction

At all material times, Respondent, a labor organization, has been a not-for-profit corporation with its principal place of business located in Latham, New York and has been engaged in representing employees in bargaining with employers. During the preceding twelve months the Respondent purchased and received at its Latham, New York facility goods and services valued in excess of $50,000 directly from points located outside the State of New York. The Respondent admits and I find that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

At all material times, Unite Here Local 19 (Local 19) has been a labor organization within the meaning of Section 2(5) of the Act. Since until March 22, Respondent and Local 19 were parties to a series of collective-bargaining agreements, including an agreement effective by its terms from April 1, 2006 through March 31, that established terms and conditions of employment of the employees in the unit (GC Exh. 2).

By letter dated March 18, Union sub-district director Richard Knowles formally requested Respondent Chief Executive Director Tina Gerardi to recognize the Charging Party as the exclusive collective-bargaining representative of the Economic and General Welfare professional employees (E & GW) formally represented by Local 19. Additionally, the Union requested that the Respondent adopt the terms and conditions of the existing collective-bargaining agreement between Local 19 and the Respondent for a period of 60 days while the parties engaged in negotiations over a new agreement (GC Exh. 3).

By letter dated March 19, Gerardi denied the Union's request for immediate recognition (GC Exh. 4). In this regard, the Respondent informed the Union that it had not received formal notification from Local 19 that it had disclaimed interest in representing the E & GW professional employees, that a request to negotiate had been received from Local 19 and bargaining sessions have been scheduled for March 23-26, that an official of the union that represents the Association's clerical employees asserted that they would be representing the Local 19 bargaining unit, and on March 18, the Union claims that it represents the E & GW professional employees. Based on the above, and particularly noting the conflicting information that possibly three union's claim interest in representing the E & GW employees, the Association preferred that this matter be resolved through a Board conducted secret ballot election.

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[2] The Motion of the Charging Party to correct the date that it filed a representation petition with the Board to March 26 is granted and received in evidence as CP Exh. 1.

[3] The Motion of the Respondent in fn 1 of its post-hearing brief to correct the transcript is granted.

By letter and e-mail dated March 19, Local 19 informed Gerardi that effective March 22, it was disclaiming any interest in representing the E & GW professional employees (GC Exh. 5).

By e-mail dated March 22, Local 19 executive committee co-chair Victoria Longo informed Gerardi that the E & GW professional employees have chosen to merge with the Charging Party. Longo urged Gerardi to voluntarily recognize the Union as the representative of the professional employees (GC Exh. 6).

By e-mail dated March 23, Longo recommended that since a majority of the former Local 19 bargaining unit desires to be represented by the Union, that a card check performed by a neutral third party be scheduled at the earliest possible date (GC Exh. 8).

By e-mail dated March 23, Counsel for the Respondent informed Longo that it did not intend to voluntarily recognize the Union and suggested the issue be presented to the Board in accordance with their election procedures (GC Exh. 9).

By letter dated March 24, Gerardi informed Longo[4] that since Local 19 has disclaimed interest in representing the E & GW professional employees effective March 22, the Respondent intends to retroactively implement to that date the same terms and conditions of employment for the E & GW employee's that are presently in place for Management, Confidential Supervisory staff (MCS), and other non-represented professional employees. A copy of those employment conditions was attached (GC Exh. 10). Additionally, Gerardi informed Longo of Respondent's intent to issue "Blackberry" cell phones to all E & GW professional employees on or about June 1 for business communications.

On March 26, the Union filed a petition for representation in Case 3-RC-11964 seeking to represent the E & GW professional employees.

On May 24, the Union was certified as the exclusive collective-bargaining representative of the E & GW professional employees and since that time, based on Section 9(a) of the Act, has been the exclusive collective-bargaining representative of the unit.

By letter dated May 27, Knowles informed Gerardi that the Union was just certified by the Board as the exclusive collective-bargaining representative of the E & GW professional employees. He opined that the changes in conditions of employment recently implemented on March 22 were made in retaliation of the employee's choice to exercise their Section 7 rights under the Act, and requested immediate rescission of those employment conditions. Lastly, Knowles requested to bargain over any proposed future changes to the cell phone and internet reimbursement practices that would impact members of the bargaining unit (GC Exh. 13).

By letter dated June 1, Counsel for the Respondent replied to Knowles and denied that the recently implemented March 22 conditions of employment were related to the Union seeking to represent the E & GW professional employees. Counsel noted that the Respondent's action was to put in place the same terms and conditions of employment that other non-unit professional staff members presently enjoy. Lastly, Counsel took the position that its intention to provide E & GW professional employees with "Blackberry's" would not be postponed since it did not materially change terms and conditions of employment, and is not a mandatory subject of bargaining (GC Exh. 14).

[4] Similar letters were sent to other impacted E & GW professional employees (GC Exh. 20).

By letter dated June 7, Knowles informed Gerardi and Counsel for the Respondent that the timing of the recently implemented March 22 employment conditions was suspicious and challenged the Respondent's assertion that cell phone and internet reimbursement practices were not mandatory subjects of bargaining (GC Exh. 15).

By letter dated June 10, Counsel for the Respondent disagreed with the assertions in Knowles June 7 letter regarding the timing of the March 22 implemented employment conditions, and stated that since the Respondent substituted one form of employer-paid cell phone and internet usage for another there was no change in conditions of employment requiring a bargaining obligation (GC Exh. 16).

By e-mail dated June 11, Respondent implemented a "Blackberry" E & GW program policy that provided for discipline in the event the professional employees did not abide by its terms and conditions (GC Exh. 17).

B. The 8(a)(1) Allegations

The General Counsel alleges in paragraph 9 of the complaint that the Respondent interfered with employees' union organizing activities by changing terms and conditions of employment, including compensation, for employees in the unit during a union organizing campaign.

The Respondent defends its conduct by arguing that the complaint does not allege that it engaged in any independent Section 8(a) (1) conduct during the Union organizing campaign including threats, interrogation, or surveillance of employees nor has the General Counsel established intent by the Respondent to discriminate against the Union for its organizing activities. Moreover, it asserts that even if it was aware of the Union organizing campaign it had no knowledge when a representation petition would be filed but notes that the organizing campaign was obviously completed on or before March 19, when the Union requested that the Respondent voluntarily recognize it based on a majority of authorization cards having been obtained from members of the bargaining unit (GC Exh. 3).

Additionally, the Respondent asserts that it acted during the window when no union represented its employees to change conditions of employment for the purpose of making those employees terms the same as all other non-represented employees employed by Respondent.[5] Lastly, the Respondent emphasizes that the General Counsel has not cited any case law support based on the specific facts of this case including the remedy that the unilaterally implemented terms and conditions of employment be rescinded without the presence of a 8(a)(3) allegation in the complaint.

Discussion

While the General Counsel concedes that it has not uncovered any case law support to fit the exact facts presented herein,[6] it relies on a number of cases that stand for the proposition

[5] Gerardi credibly testified that the decision to change E & GW employees' terms and conditions of employment was made between March 19 and 22, a period prior to the filing of the Charging Party's representation petition on March 26.

[6] In its post-hearing brief, Counsel for the Acting General Counsel opines that the facts in *The Anthem,* LLC are similar to the instant case (JD (NY)-13-05, March 23, 2005). It appears, however, that no appeal was filed with the Board. In that case, unlike the subject case, the

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that an employer cannot withhold or provide benefits during the course of a union organizing campaign that infringe on employees Section 7 rights.

For example, in *Parma Industries, Inc.,* 292 NLRB 90, 91 (1988), the employees regularly received semiannual pay raises in January and June. After a union organizing campaign commenced, respondent informed employees that there would be no raise based on its belief that because of the union activity it might be considered a bribe.

Under Board law, when an employer during an organizing campaign departs from its usual practice of granting or withholding benefits it may be an effort to influence the upcoming election, absent an explanation of a lawful reason for the departure. A violation of Section 8(a)(1) was found in *Parma*, however, in that case there was evidence of numerous plant closure threats and other forms of misconduct not present in the subject case.

In *Holly Farms Corporation,* 311 NLRB 273 (1993) the Board found that the Act was violated when the Respondent granted the live haul unit employees a wage increase shortly before a scheduled representation election. The Board stated, however, that in finding the violation it does not rely on any presumption that wage increases granted during union organizing campaigns are unlawful. Rather, it drew an inference of improper motivation and interference with employee free choice from all the evidence presented and from the respondent's failure to establish a legitimate reason for the timing of the increase. In the subject case, the change in the E & GW professional employee's terms and conditions of employment occurred after the Union's organizing campaign had ended and before the Charging Party filed its representation petition with the Board. It is also noted, unlike the subject case, that the judge in *Holly Farms* found numerous instances of unlawful conduct designed to undermine the union's organizing efforts.

In *Wis-Pak Foods, Inc.,* 319 NLRB 933 (1995) the Board found a violation of the Act when the respondent made a post-election announcement of a general wage increase when the election was clearly subject to invalidation if the objections were meritorious holding that the wage increase was an attempt to gain employee support and to assure support against union representation in the event a second election was conducted.

The facts in *Wis-Pak* are clearly distinguishable from the subject case particularly noting that the changes in conditions of employment here were effectuated at a time when neither the Union nor any labor organization represented the employees for collective-bargaining purposes.

I also note that reducing the benefits of E & GW professional employees did not undermine employee support in light of the overwhelming results in the May 2010 Board

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employer was specifically made aware of the union's organizing activity. Likewise, before disclaiming interest in representing the unit employees, Local 670 filed a deauthorization petition that if successful could have nullified the union security provisions in the contract providing that employees would not be required to pay dues going forward. In the subject case, while a representation petition was filed on March 26, no evidence was presented by the Charging Party that it informed the Respondent about an organizing campaign that was ongoing in late February or early March 2010 or that the Respondent independently became aware of such activity. Indeed, it was not until March 19 that the Respondent first learned about the Charging Party's interest in representing its employees and was seeking recognition based on authorization cards showing that a majority of the bargaining unit sought representation (GC Exh. 3 and 4).

conducted representation election of 65 yes votes in a unit of 66 employees nor did any actions of the Respondent impede the Union from obtaining a majority of signed authorization cards on or before March 18, a period prior to the March 22 change in the employee's terms and conditions of employment.

For all of the above reasons, and particularly noting that the General Counsel did not establish any animus or unlawful actions of the Respondent towards the Union during the course of the organizing campaign, the unilateral implementation of the March 22 changes in conditions of employment did not violate Section 8(a)(1) of the Act.[7]

C. The 8(a)(1) and (5) Allegations

The General Counsel alleges in amended paragraph 10 of the complaint that on or about June 11, Respondent unilaterally implemented a "Blackberry" policy which impacted cell phone reimbursement and disciplinary practices for employees without prior notice or affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of the conduct.

Discussion

If a term or condition of employment concerns a mandatory subject of bargaining, an employer generally may not discontinue the term or condition without first bargaining with the union to impasse or agreement. See *NLRB v. Katz,* 369 U.S. 736 (1962). Stated differently, during contract negotiations, an employer may not make unilateral changes to represented employees' terms and conditions of employment without bargaining to impasse. The Board has recognized exceptions to this general rule where "economic exigencies" compel prompt action, and where the union waives its right to bargain. However, no economic exigencies or waivers are asserted in the instant case. It is well settled, that an employer violates Section 8(a)(1) and (5) of the Act when, absent waiver, it changes employees' wages or other terms and conditions of employment without giving the union an appropriate opportunity to bargain about the changes. Indeed, the reimbursement of legitimate employee expenses is a mandatory subject of bargaining. *NLRB v. Borg-Warner Corp.,* 356 U.S. 342, 348 (1958).

Contrary to the Respondent's argument in brief that the Association simply substituted one form of employer-paid cell phone and internet usage for another that resulted in no material change in conditions of employment requiring a bargaining obligation, I find that the cell phone reimbursement policy that the parties adhered to prior to June 11, and which was part of the Local 19 collective-bargaining agreement with the Respondent, provided for employees to be reimbursed for business cell phone and internet usage when they used their personal cell phones for business purposes. Specifically, the employee's rather then the Respondent paid the carrier's monthly charges for their personal cell phones (they were reimbursed by the Association for business calls up to $50 per month), but there was no requirement that bargaining unit employees had to use their personal cell phones for business communication. Moreover, there were no provisions for employee discipline if the terms and conditions of the cell phone reimbursement portion of the agreement were violated (GC Exh. 2-Section 11.11). Additionally, contrary to the Respondent's argument that Section11.11 permitted it to assign employees a cell phone, I note that the collective-bargaining agreement expired on March 22 due to Local 19 disclaiming interest in representing the unit employees, and therefore, the terms

[7] I note that when the changes in working conditions occurred for the E & GW employees, they had not had a wage increase for approximately one year.

and conditions of employment did not continue in full force and effect. In any event, the Respondent did not adhere to the agreement provisions since employees were not provided six months notice of the decision to provide cell phones as required in Section 11.11. This is in sharp contrast to the policies implemented on June 11, including requiring the E & GW employees to exclusively use and carry their Blackberries with power on at all times while on Association business, requiring employees to return all business calls and e-mails within 24 hours, and informing employees that failure to abide by the policy may result in discipline (GC Exh. 17).[8]

Longo testified, and Gerardi did not disagree, that no written policy existed for "Blackberry" usage prior to June 11 for any of Respondent's employees.[9] Moreover, Longo and Knowles did not learn about the newly implemented "Blackberry" policy until the date of implementation, precluding a meaningful opportunity for the Union to request negotiations.

While the Respondent initially asserted that the "Blackberry" policy was not a mandatory condition of employment (GC Exh. 14), it changed its position and agreed that cell phone and internet usage remains a matter for collective bargaining (GC Exh. 16).

I also reject the Respondent's argument that Longo, as a union representative, was notified on March 24 (GC Exh. 10) that each E & GW professional staff member will be issued a "Blackberry" for Association business and did not request negotiations.[10] First, on March 24, Longo was not a representative of Local 19 since it had disclaimed interest in representing the bargaining unit effective March 22, nor was she an official representative of the Union as no representation petition had been filed as of yet. Therefore, Longo was an employee and had no authority to request the Respondent to negotiate. Second, on May 27, three days after the Union was certified and prior to the "Blackberry" policy being implemented, Knowles requested to negotiate over any proposed future changes to the cell phone and internet reimbursement policy (GC Exh. 13). At all material times the Respondent refused to negotiate over the "Blackberry" policy.

Accordingly, I find that since the "Blackberry" policy was a significant change in the E & GW employee's conditions of employment that included provisions for discipline if they did not abide by its provisions, there was an obligation to negotiate over its conduct and the effects of the conduct. Here, the Respondent did not independently inform the Union in advance of implementing the policy and further ignored the requests of the Union to negotiate over any proposed future changes to its cell phone policy. Under these circumstances, the Respondent

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[8] The Respondent's reliance on its "Employee Conduct and Work Rules" for the proposition that no change in conditions of employment occurred requiring a bargaining obligation is rejected (R Exh. 1). In this regard, infractions of rules of conduct that may result in disciplinary action including the unauthorized use of telephones, mail system, computers or other employer-owned equipment is substantially different than the "Blackberry" policy unilaterally implemented on June 11.

[9] Other professional employees employed as part of Respondent's program staff and senior management used Association issued Blackberries prior to June 11; however, no written policy existed for their use. These employees are not represented by any labor organization for collective-bargaining purposes.

[10] The information in the March 24 letter (GC Exh. 10) did not provide any specific details when compared to the actual policy that was implemented on June 11 (GC Exh. 17), and did not set a fixed implementation date. Thus, the Respondent's reliance on the holding in *Sivalls, Inc.,* 307 NLRB 986 (1992) is misplaced.

violated Section 8(a) (1) and (5) of the Act.[11]

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) and (5) of the Act when it unilaterally implemented a "Blackberry" policy that impacted cell phone and internet reimbursement practices for employees without prior notice or affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of the conduct.

4. The Respondent did not violate Section 8(a) (1) of the Act by changing terms and conditions of employment including compensation for employees in the unit during a union organizing campaign.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Additionally, employees adversely affected by the Respondent's unlawful unilateral change in its "Blackberry" policy must be made whole in accordance with *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir.1971). Thus, I shall order that any backpay or other monetary awards that is owed to employees shall be paid with interest compounded on a daily basis in accordance with *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, New York State Nurses Association, its officers, agents, and representatives, shall

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[11] The Respondent's reliance on *Fresno Bee,* 339 NLRB 1214 (2003) for the proposition that bargaining is not required because the decision to implement the "Blackberry" policy was made before the certification of the Charging Party on May 24 is misplaced. Indeed, the majority in that case also found that there was a bargaining obligation regarding changes to employee lunch breaks and shift changes since they were mandatory subjects of bargaining, a situation similar to the subject case.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from

(a) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify and give the Union an opportunity to bargain before making any change in the terms and conditions of employment of employees in the unit.

(b) On request of the Union, rescind the changes to terms and conditions of employment unilaterally implemented on June 11, 2010, involving a new "Blackberry" policy.

(c) Make employees whole for any loss of earnings or benefits suffered as a result of our unilateral change in the "Blackberry" policy in accordance with the remedy section of this decision.

(d) Within 14 days after service by the Region, post at the Respondent's Latham, New York, office copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 3 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an internet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 11, 2010.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(f) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., February 25, 2011

Bruce D. Rosenstein
Administrative Law Judge

[13] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of our employees by unilaterally changing the “Blackberry” policy without first bargaining with the Union in good faith to impasse.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify and give the Union an opportunity to bargain before making any changes to terms and conditions of employment including implementing a “Blackberry” policy for our employees.

WE WILL, on request of the Union, rescind our “Blackberry” policy unilaterally implemented on June 11, 2010.

WE WILL make employees whole for any loss of earnings or benefits suffered as a result of our unilateral change in the "Blackberry" policy with interest compounded on a daily basis in accordance with the remedy section of the decision.

New York State Nurses Association

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Niagara Center Building
130 South Elmwood Avenue, Suite 630
Buffalo, New York 14202-2465
Hours: 8:30 a.m. to 5:00 p.m.
716-551-4931.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 716-551-4946.